IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 22ND OCTOBER 2007 / 30TH ASWINA 1929

Bail Appl..No. 6322 of 2007()

[CRIME NO.44/07 OF KASARAGOD POLICE STATION]

: PETITIONER/ACCUSED

DINESH KUMAR N., S/O. SUDHAKARA,
R/AT NR. LADIES HOSTEL, ANANGORE, KASARAGOD.

BY ADV. SRI.T.B.SHAJIMON
SMT.GOVINDU P.RENUKADEVI

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REP. BY
INSPECTOR OF POLICE, KASARAGOD POLICE STATION,
REP. BY THE PUBLIC PROSECUTOR, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 22/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.6322 of 2007

Dated this the 22nd day of October, 2007

ORDER

Application for anticipatory bail. A crime has been registered alleging commission of the offence punishable under the Kerala Abkari Act at the Kasargod Police Station. The petitioner apprehends arrest in that crime. 400 packets of arrack each containing 100 ml were allegedly found in a vehicle in which it was being transported. The occupants of the vehicle took to their heels and they could not be arrested. The vehicle was seized. Attempts are being made by the Investigating Officer to trace the owner of the vehicle who was in possession at the relevant time. It has to be ascertained whether the petitioner is the owner of the vehicle and whether he had any contumacious responsibility for the transport of illicit liquor in the said vehicle. The petitioner has not been arrayed as accused formally yet. The petitioner will have to be interrogated. If he has culpable involvement, he will have to be arrested. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. According to the learned counsel for the petitioner, the petitioner is not the person in possession of the

vehicle now. Even if it be accepted that the petitioner is the owner of the vehicle, merely because he is the owner of the vehicle, no allegation under Section 64 A of the Kerala Abkari Act can be raised against the petitioner. In these circumstances it is prayed that anticipatory bail may be granted to the petitioner.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that there are no circumstances justifying or warranting the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. The petitioner will have to be questioned. Depending on the nature of the information revealed, if any further information against the petitioner is obtained, he may have to be arrested. Only if it is found that he had a contumacious role in the crime committed, he shall be arrested. At the present stage, it is not necessary to arm him with the order of anticipatory bail, submits the learned Public Prosecutor .

4. I find merit in the opposition by the learned Public Prosecutor . The petitioner has not been arrayed as an accused yet. The possibility of the petitioner being arrested as an accused in this crime cannot be ruled out. But at any rate, at the present stage, I am not at all persuaded to agree that, it is necessary, in the interests of justice, to issue direction under Section 438 Cr.P.C. The petitioner

must co-operate with the investigator and appear before him. He can place all relevant details before the Investigating Officer. I find no features in this case which would justify the invocation of the jurisdiction under Section 438 Cr.P.C.

5. This bail application is, in these circumstances, dismissed, but with the observation that the petitioner can approach the Investigating Officer and place all the relevant data before the Investigating Officer. If he were arrested, he can apply for regular bail before the learned Magistrate. Such application for bail, if any filed, needless to say, shall have to be disposed of on merits and expeditiously by the learned Magistrate.

(R.BASANT, JUDGE)

rtr/-